



IN THE
SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 1945

No.

JULIAN LENTIN, DOING BUSINESS AS J. LENTIN
LUMBER COMPANY,
*Petitioner (Appellant-
Defendant below),*

vs.

CHESTER A. BOWLES, ADMINISTRATOR, OFFICE OF PRICE
ADMINISTRATION FOR AND ON BEHALF OF THE UNITED STATES,
*Respondent (Appellee-
Plaintiff below).*

PETITION FOR WRIT OF CERTIORARI TO UNITED STATES CIRCUIT
COURT OF APPEALS FOR THE SEVENTH CIRCUIT.

BRIEF IN SUPPORT OF PETITION.

I.

Jurisdiction of this court.

Petitioner invokes the jurisdiction of this court under
U. S. C. Tit. 28, secs. 347 and 350.

II.

The remarks of the trial court not founded upon the record, and relating to other cases, evidence prejudice against petitioner's case, as belonging to a **CLASS** of cases, and render the hearing and judgment void.

Moore v. Dempsey, 261 U. S. 86, 91.

Brown v. Mississippi, 297 U. S. 278, 285.

Hawk v. Olson, 90 L. Ed. (U. S.) 67, 70.

Boykin v. Huff, 121 Fed. (2d) 867, 872 (C. A. D. C.) opinion by Mr. Justice Rutledge.

(a) The absence of the organic basis of due process of law renders the trial a mere "mask" and not a hearing according to the law of the land.

See authorities, *supra*.

(b) Petitioner had no right to file an affidavit of bias and prejudice, as the prejudice was not personal but against a class of cases.

U. S. C. Tit. 18, sec. 25.

III.

Under section 205(e), as amended, of the so-called Emergency Price Control Act of 1942 damages can be assessed only against sellers and not against brokers or factors.

Appendix A, p. 17 *post*.

(a) The trial court's refusal of petitioner's evidence showing his good faith, in the light of the prejudice against the class of cases to which the instant case belongs, is a clear denial of a trial according to the law of the land.

Moore v. Dempsey, 261 U. S. 86, 91.

Brown v. Mississippi, 297 U. S. 278, 285.

(b) The trial court's exclusion of petitioner's evidence and refusal of offers of proof worked a confiscation of petitioner's property in violation of the Fifth Amendment in assessing damages referable to the following items:

1. Petitioner's distribution yards and facilities;
2. Credit for 16, 18 and 20 feet lengths;
3. Petitioner's status as a broker;
4. The alleged overcharges on 9 cars not covered by the original complaint;
5. As to the grade of lumber.

IV.

Exclusion of petitioner's evidence and offers of proof to show that he sought the advice of Huntley of the Chicago OPA office renders the judgment a confiscatory deprivation of property without due process of law.

(a) Petitioner was entitled to show good faith under Section 205 (e) of the 1942 Emergency Price Control Act, as amended.

Appendix A, p. 17 *post*.

(b) Respondent and the trial court erred in considering that petitioner was trying to create an estoppel against a governmental agency.

(c) The duty of petitioner as an established, reputable lumber dealer was to facilitate national security by supplying lumber for civilian use. *Salus populi est suprema lex.*

(d) The wording of the press release, part of Amendment 8, was clear enough to work legal compulsion upon petitioner.

United States v. United States Steel Corporation,
251 U. S. 417, 447.

Panama Refining Co. v. Ryan, 293 U. S. 388, 429.

(e) Baxter's testimony, relating to his experiences with the Kansas City, Missouri, office of the OPA should have been stricken, for under the general rule known as *res inter alios acta* a litigant cannot be affected by the words or acts of others with whom he is in no wise connected and for whose words or acts he is not legally responsible.

32 C. J. S. Evidence, p. 432, sec. 576.

General Motors Corporation v. Blackmore, 53 Fed.
(2d) 725, 729.

(f) The trial court's reliance upon Baxter's experiences with the Kansas City office of OPA against petitioner's experiences with the Chicago OPA office denied to petitioner the guaranty of Article IV Section 2 of the Constitution of the United States, viz.: "The citizens of each state shall be entitled to all of the privileges and immunities of the several states."

V.

The judgment is based upon a measure of damages which confiscates petitioner's property without due process of law.

(a) Here the items were mathematically tabulated, in documents without relevant supporting evidence, and the court merely doubled same and entered judgment.

(b) "The court cannot predicate a judgment for damages upon the mathematical suppositions of the claimant. Proof resting not in conjecture must be offered; calcu-

lations as to the percentage of the cost of material, etc., cannot form the basis for the judgment asked in respect to this item and it will be disallowed. Damages must be the direct and proximate result of the injury complained of and when capable of proof with certainty must be so proven. This rule is elementary."

Wyant v. United States, 46 U. S. Ct. Cl. 205, 210.

(c) This is not a case within the general rule that uncertainty which affects the measure or extent of the injury does not bar a recovery.

Eastman Kodak Co. v. Southern Photo Materials Co., 273 U. S. 359, 379, and authorities cited.

(d) Nor is this a case where a defendant by his conduct renders difficult the ascertainment of damages. Here the court merely doubled the aggregate amount of alleged overcharges in plaintiff's (respondent's) Exhibit 51 and added to same double the amount of respondent's "proportional" estimate. All of the data were either courteously furnished by petitioner or could have been readily obtained by respondent. If any misconduct intervened it was the trial court's prejudice against the class of cases to which the instant case belongs.

Eastman Kodak Co. v. Southern Photo Materials Co., 273 U. S. 359, 379, and authorities cited.

(e) There is no dispute in the record that petitioner's gross profit was less than \$3,000.00, for which judgment for \$45,665.94 was entered against him. Such cruel punishment is not contemplated by either the original so-called Emergency Price Control Act or the Stabilization Act, or any amendment to either of said acts, and constitutes confiscation of property without due process of law in violation of the Fifth Amendment to the Constitution of the United States.

VI.

The injunction is contrary to the applicable doctrine of this court.

(a) All of the evidence is that the alleged transactions complained of have been discontinued in good faith, before commencement of suit, and that petitioner will not again enter into same.

(b) The holding of the Court of Appeals for the Seventh Circuit is contrary to the applicable decision of this court in *The Hecht Company v. Bowles*, 321 U. S. 321.

For the several reasons herein presented it is deferentially urged that the writ of certiorari be allowed.

Respectfully submitted,

HENRY H. KOVEN,
Counsel for Petitioner.

LOUIS E. LEVINSON,
Of Counsel.

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